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PATENT
Attorney Docket No. 020375-007210US

TOWNSEND and TOWNSEND and CREW LLP

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

Brian Dentler, et al.

Application No.: 10/618,072

Filed: July 11, 2003

For: METHOD AND SYSTEMS TO
IDENTIFY AND CONTROL PAYMENT
FRAUD

Confirmation No. 3588

Examiner: Eric Tak Wai Wong

Art Unit: 3693

**APPELLANTS' BRIEF UNDER
37 CFR §41.37**

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants (hereafter "Appellants") hereby submit this Brief in support of its appeal from a final decision by the Examiner, mailed July 21, 2008 in the above-captioned case. Appellants respectfully request consideration of this appeal by the Board of Patent Appeals and Interferences (hereafter the "Board") for allowance of the above-captioned patent application.

An oral hearing is not requested at this time.

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I. REAL PARTY IN INTEREST

The invention is assigned to First Data Corporation of Greenwood Village, Colorado.

II. RELATED APPEALS AND INTERFERENCES

A notice of appeal has been filed in application. There are no interferences that are related to the present application.

III. STATUS OF CLAIMS

Claims 1-26 are currently pending in the above-referenced application. No claims have been added or cancelled. Therefore, claims 1-26 are present for examination. Claims 1, 13, 18 and 24 are independent claims. Claims 1-26 are rejected, and are the subject of this appeal. No claims are allowed, withdrawn, or objected to.

IV. STATUS OF AMENDMENTS

Claims 1-26 were finally rejected in the final Office Action mailed July 21, 2008 (hereinafter "Office Action"). In response to the Office Action, a response after final amendment was filed on September 22, 2008. Subsequently, the Office confirmed the rejections from the Office Action in an Advisory Action mailed on October 1, 2008 (hereinafter "Advisory Action"). In response, a Notice of Appeal was filed on October 21, 2008. A copy of all claims on appeal is attached hereto as the Appendix of Claims.

V. SUMMARY OF CLAIMED SUBJECT MATTER

One embodiment of the claimed invention recites a method for processing a payment towards a credit account. The method includes retrieving a history of profile records for the credit account over a period of time preceding receipt of the payment. (see **Specification at paragraph 0009**). Each such profile record corresponding to a date within the period of time and include an account balance for the credit account on the date as well as a value of credited payments made towards the credit account on the date. (see **Specification at paragraph 0018**). Furthermore, based on an analysis of the retrieved history of profile records, the method includes generating a behavior score associated with the credit account. (see **Specification at paragraph 0021**). The behavior score assigns a level of risk to the credit account, and then based on the behavior score, a determination whether to float the payment, float part of the payment and apply the rest of the payment, or apply the payment in full, is made. (see **Specification at paragraph 0022**).

In an alternative embodiment, a method for managing a credit account, is recited. The method includes maintaining a history of profile records for the credit account. (see **Specification at paragraph 0009**). Each such profile record corresponding to a date and including an account balance for the credit account on the date and an indication whether any prior payments are floating on the date. (see **Specification at paragraph 0018**). The method further includes determining a new profile record in response to receipt of a payment towards the credit account or of a request for a charge against the credit account, and adding the new profile record to the history of profile records. Further, based on an analysis of the history of profile records, the method includes generating a behavior score associated with the credit account. (see **Specification at paragraph 0021**). The behavior score assigns a level of risk to the credit account, and then based on the behavior score, the method includes determining whether to float the payment, float part of the payment and apply the rest of the payment, or apply the payment in full. (see **Specification at paragraph 0022**).

In yet another embodiment, a computer-readable storage medium having a computer-readable program embodied therein for directing operation of a computer system including a processor and a storage device, is recited. The computer-readable program includes instructions for operating the computer system to process a payment towards a credit account. (see **Specification at paragraph 0050**). The processing includes retrieving a history of profile records from the storage device for the credit account over a period of time preceding receipt of the payment. (see **Specification at paragraph 0009**). Each such profile record corresponds to a date within the period of time and including an account balance for the credit account on the date and a value of credited payments made towards the credit account on the date. (see **Specification at paragraph 0018**). Furthermore, based on an analysis of the retrieved history of profile records, the process includes generating a behavior score associated with the credit account. (see **Specification at paragraph 0021**). The behavior score assigns a level of risk to the credit account. Then, based on the behavior score, the process includes determining whether to float the payment, float part of the payment and apply the rest of the payment, or apply the payment in full. (see **Specification at paragraph 0022**).

In another embodiment, a computer system including a storage device and a processor in communication with the storage device, is recited. The system further includes a memory coupled with the processor. The memory includes a computer-readable storage medium having a computer-readable program embodied therein for operating the computer system to process a payment towards a credit account. (see **Specification at paragraph 0050**). The computer-readable program includes instructions for retrieving a history of profile records from the storage device for the credit account over a period of time preceding receipt of the payment. (see **Specification at paragraph 0009**). Each such profile record corresponding to a date within the period of time and including an account balance for the credit account on the date and a value of credited payments made towards the credit account on the date. (see **Specification at paragraph 0018**). Furthermore, based on an analysis of the retrieved history of profile records, computer-readable program further includes instructions for generating a behavior score associated with the credit account. (see **Specification at paragraph 0018**). The behavior score

assigns a level of risk to the credit account. Then, based on the behavior score, the computer-readable program includes instructions for determining with the processor whether to float the payment, float part of the payment and apply the rest of the payment, or apply the payment in full. (see Specification at paragraph 0022).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Claims 1-5, 9-16, 18-21, 24 and 26 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application Publication No. 2003/0167231 A1 by Winking et al. (hereinafter "Winking") in view of FICO score, as evidenced by U.S. Patent Application Publication No. 2003/0046223 A1 by Crawford et al. (hereinafter "Crawford").

B. Claims 6-8, 17, 22-23 and 25 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Winking in view of FICO, and further in view of Applicant admission of prior art (hereinafter "AAPA").

No claims were indicated as allowable.

VII. ARGUMENT

**THE REJECTION OF CLAIMS 1-5, 9-16, 18-21, 24, AND 26 BY
WINKING IN VIEW OF CRAWFORD UNDER 35 U.S.C. § 103(a) IS
IMPROPER BECAUSE THE COMBINATION OF WINKING AND
CRAWFORD FAILS TO TEACH EACH AND EVERY ELEMENT
OF THE CLAIMS**

The Office Action rejects claims 1-5, 9-16, 18-21, 24 and 26 under 35 U.S.C. § 103(a) as being obvious in view of Winking in view of Crawford. Appellants respectfully request reconsideration of the rejection because the Office has failed to establish a *prima facie* case of obviousness. As the Board is aware, in order to establish a *prima facie* case of obviousness, all claim limitations must first be taught or suggested by the prior art. See, e.g., DyStar Textilsfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co., 464 F.3d 1356, 1360 (Fed. Cir. 2006). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” M.P.E.P. § 2143.03 (citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970)). The Examiner must then provide an explicit analysis supporting the rejection. See *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) (“a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art”). While the Examiner can choose one of several exemplary rationales from the MPEP to support an obviousness rejection under KSR, all the rationales still require the Examiner to demonstrate that all the claim elements are shown in the prior art. See MPEP § 2143, Original Eighth Edition, August 2001, Latest Revision July 2008.. For the reasons recited below, it is respectfully submitted that the Examiner has failed to properly establish a *prima facie* case of obviousness.

A. Independent claims 1, 13, 18, and 34 are patentable over Winking in view of Crawford

Ground A rejects claims 1, 13, 18, and 24 which are independent claims from which all other pending claims depend. Claims 13, 18, and 24 include similar limitations to claim 1 and are rejected on similar grounds as claim 1. Accordingly, the initial arguments will focus on independent claim 1.

1. Winking in view of Crawford fails to teach or suggest based on an analysis of the retrieved history of profile records, generating a behavior score associated with the credit account, wherein the behavior score assigns a level of risk to the credit account

Appellants submit that Winking discloses a "system [in which] a client is able to submit payment transactions in different formats for processing. Depending on the submission format, the payment transaction can be processed by either a batch process or a right-time process. The right-time process processes the payment transaction in real-time upon submission thereby allowing the corresponding credit account to be updated in a more timely manner." (Winking at Abstract.) Winking further discloses that "if the credit account has a history of bounced check payments and the payment amount is made in check, then the available credit may not be adjusted until the check is cleared. On the other hand, if the payment amount was made in cash, then the full payment amount may be applied to the available credit." (*Id.* at page 3, paragraph 0024).

In contrast, claim 1, and similarly claims 13, 18, and 24, recite that "based on an analysis of the retrieved history of profile records, generating a behavior score associated with the credit account, wherein the behavior score assigns a level of risk to the credit account." (Emphasis provided.) Claim 1 further recites that "based on the behavior score, determining whether to perform one of the following: *float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full.*" (Emphasis provided.) Appellants submit that nowhere does Winking teach or suggest these features. In fact, the Office Action at page 3, line 3 explicitly states that "Winking does not explicitly teach" such operations. Instead, the Office Action relies on Crawford as disclosing these operations of claim 1.

Crawford discloses "[a] comprehensive score delivery and explanation service" which includes "[c]redit scores delivered to consumers", "[t]he primary reason codes that have influenced the score", "[r]epresentation of the consumer's credit bureau report", and "[a] personalized score explanation...in plain language." (Crawford at paragraphs 0007-0010). The Examiner seems to be asserting that this section of Crawford discloses that "based on an analysis

of the retrieved history of profile records, *generating a behavior score associated with the credit account*, wherein the behavior score assigns a level of risk to the credit account" and that "based on the behavior score, determining whether to perform one of the following: *float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full*" as recited by claim 1. (Emphasis provided.) Appellants are unable to reconcile the Examiner's assertion. As can be seen in claim 1, a behavior score is generated from a history profile and a level of risk is assigned to the creditor. Then, based on the level of risk, a determination whether to float a payment, float part and apply part of the payment, or apply the entire payment is made. Appellants are unable to find any teaching or suggestion in the portions of Crawford cited by the Examiner or in Crawford as a whole of such features. Crawford is merely a simplified viewing mechanism for a credit report/score, whereas claim 1 is a method for determining a risk associated with a creditor, and based on that risk determine how to apply a payment. Crawford does not make a risk assessment nor does Crawford determine how to apply a payment. Thus, for at least this reason, Appellants submit that the Examiner has failed to establish a *prima facie* case of obviousness.

2. *Winking in view of Crawford fails to teach or suggest that based on the behavior score, determining whether to perform one of the following: float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full*

Furthermore, claim 1 recites that "based on an analysis of the retrieved history of profile records, *generating a behavior score associated with the credit account*, wherein the behavior score assigns a level of risk to the credit account." (Emphasis provided.) Appellants submit that nowhere does Winking nor Crawford teach or suggest generating a behavior score associated with the credit account. Claim 1 further recites that "based on the behavior score, determining whether to perform one of the following: *float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full*." (Emphasis provided.) Nowhere does Winking or Crawford teach or suggest determining dynamically whether to float all, part, or none of a payment based on the behavior score (or level of risk) associated with a credit account. Conversely, the systems in Winking and Crawford are static in that they either

float or apply the entire payment amount on an all-or-nothing basis. Thus, for at least this additional reason, Appellants submit that the Examiner has failed to establish a *prima facie* case of obviousness.

B. Dependent claims are not made obvious by Winking in view of Crawford

Ground B for rejection is directed toward dependent claims. Accordingly, dependent claims 6-8, 17, 22-23 and 25 depend upon and contain all the limitations of independent claims 1, 13, 18, and 22. Therefore, for at least the reasons mentioned above, Winking in view Crawford fails to teach or suggest each and every element of claims 6-8, 17, 22-23 and 25. As such, at least by virtue of their dependence on an allowable independent claims, claims 2-18 and 35-44 are patentable over Winking in view Crawford.

VIII. CONCLUSION

For these reasons, it is respectfully submitted that the rejection should be reversed.

Respectfully submitted,

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IX. CLAIMS APPENDIX (37 C.F.R. § 1.192(c)(7))

1. A method for processing a payment towards a credit account, the method comprising:

retrieving a history of profile records for the credit account over a period of time preceding receipt of the payment, each such profile record corresponding to a date within the period of time and including an account balance for the credit account on the date and a value of credited payments made towards the credit account on the date;

based on an analysis of the retrieved history of profile records, generating a behavior score associated with the credit account, wherein the behavior score assigns a level of risk to the credit account; and

based on the behavior score, determining whether to perform one of the following: float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full.

2. The method recited in claim 1 wherein each such profile record further includes an indication whether any prior payments are floating on the date.

3. The method recited in claim 1 wherein each such profile record further includes the number of credited payments made towards the credit account within a time window preceding the date.

4. The method recited in claim 1 wherein each such profile record further includes a cumulative value of credited payments made towards the credit account within a time window preceding the date.

5. The method recited in claim 3 wherein the time window is at least as great as an expected time for the payment to clear.

6. The method recited in claim 1 wherein the period of time has a length at least as great as an expected time for the payment to clear.

7. The method recited in claim 1 wherein each such profile record further includes a behavior score.

8. The method recited in claim 1 wherein determining whether to float the payment comprises developing a worst-case profile from the history of profile records.

9. The method recited in claim 1 wherein determining whether to float the payment comprises considering the number of credited payments floated over the period of time.

10. The method recited in claim 1 wherein determining whether to float the payment comprises considering the number of credited payments made over the period of time.

11. The method recited in claim 1 wherein determining whether to float the payment comprises:

determining a fraction of the payment to float; and
determining a time to hold a remainder of the payment.

12. The method recited in claim 1 further comprising determining whether the payment comprises a cash or cash-equivalent payment.

13. A method for managing a credit account, the method comprising:
maintaining a history of profile records for the credit account, each such profile record corresponding to a date and including an account balance for the credit account on the date and an indication whether any prior payments are floating on the date;
determining a new profile record in response to receipt of a payment towards the credit account or of a request for a charge against the credit account;
adding the new profile record to the history of profile records;
based on an analysis of the history of profile records, generating a behavior score associated with the credit account, wherein the behavior score assigns a level of risk to the credit account; and

based on the behavior score, determining whether to perform one of the following: float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full.

14. The method recited in claim 13 wherein determining the new profile record comprises determining whether to float the payment.

15. The method recited in claim 14 wherein determining whether to float the payment comprises:

determining a fraction of the payment to float; and
determining a time to hold a remainder of the payment.

16. The method recited in claim 14 wherein determining whether to float the payment comprises analyzing a plurality of profile records retrieved from the history.

17. The method recited in claim 13 wherein each such profile record further includes a behavior score.

18. A computer-readable storage medium having a computer-readable program embodied therein for directing operation of a computer system including a processor and a storage device, wherin the computer-readable program includes instructions for operating the computer system to process a payment towards a credit account in accordance with the following:

retrieving a history of profile records from the storage device for the credit account over a period of time preceding receipt of the payment, each such profile record corresponding to a date within the period of time and including an account balance for the credit account on the date and a value of credited payments made towards the credit account on the date;

based on an analysis of the retrieved history of profile records, generating a behavior score associated with the credit account, wherein the behavior score assigns a level of risk to the credit account; and

based on the behavior score, determining whether to perform one of the following: float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full.

19. The computer-readable storage medium recited in claim 18 wherein each such profile record further includes an indication whether any prior payments are floating on the date.

20. The computer-readable storage medium recited in claim 18 wherein each such profile record further includes the number of credited payments made towards the credit account within a time window preceding the date.

21. The computer-readable storage medium recited in claim 18 wherein each such profile record further includes a cumulative value of credited payments made towards the credit account within a time window preceding the date.

22. The computer-readable storage medium recited in claim 18 wherein each such profile record further includes a behavior score.

23. The computer-readable storage medium recited in claim 18 wherein determining with the processor whether to float the payment comprises developing a worst-case profile from the history of profile records.

24. A computer system comprising:
a storage device;
a processor in communication with the storage device; and
a memory coupled with the processor, the memory comprising a computer-readable storage medium having a computer-readable program embodied therein for operating the computer system to process a payment towards a credit account, the computer-readable program including:

instructions for retrieving a history of profile records from the storage device for the credit account over a period of time preceding receipt of the payment, each such profile record corresponding to a date within the period of time and including an account balance for the credit account on the date and a value of credited payments made towards the credit account on the date;

based on an analysis of the retrieved history of profile records, instructions for generating a behavior score associated with the credit account, wherein the behavior score assigns a level of risk to the credit account; and

based on the behavior score, instructions for determining with the processor whether to perform one of the following: float the payment, float part of the payment and apply the rest of the payment, and apply the payment in full.

25. The computer system recited in claim 24 wherein the instructions for determining with the processor whether to float the payment comprise instructions for developing a worst-case profile from the history of profile records.

26. The computer system recited in claim 24 wherein each such profile record further includes an indication whether any prior payments are floating on the date.

X. EVIDENCE APPENDIX

No evidence has been submitted in this application under 37 CFR § 1.130, 1.131, or 1.132. As such, no evidence is provided in this appendix.

XI. RELATED PROCEEDINGS APPENDIX

As explained in Section 2, there are no other appeals or interferences that are related to the present application that will directly affect, or be directly affected by, or have a bearing on the board decision of the pending appeal. As such, no information is provided in this appendix.